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June 4, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996; Notice of Inquiry, GN Docket No. 04-54 ("NOI")**

**Ex parte presentation of the American Cable Association ("ACA")**

Dear Ms. Dortch:

ACA submits this ex parte presentation to supplement the current record developed in response to the NOI.

**I. Introduction and Summary**

The independent cable sector is leading the industry in delivering broadband services to consumers and businesses in smaller markets. Based on research conducted by ACA and The Carmel Group,<sup>1</sup> ACA estimates the following:

- An estimated 580 ACA member companies now offer broadband service to residential and business customers.
- These companies serve approximately 4,600,000 cable subscribers and offer broadband service to a majority of these subscribers. Most of the companies are seeking to offer broadband service to all customers by the end of 2004.
- Of these companies, 40% serve 1,000 cable modem subscribers or fewer, reflecting the increasing penetration of broadband service into smaller markets.
- In many smaller markets, the local cable operator is the only source of broadband services because other providers have chosen not to invest in the required infrastructure.

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<sup>1</sup> The Carmel Group, *The Telecom Future of Independent Cable* (May 2003) (available for download at <http://www.carmelgroup.com/download/tcg-acastudy603.pdf>) ("Carmel Group Study").

Above all, this success demonstrates two things: (i) the ability of smaller market cable businesses to deploy advanced services; and (ii) the wisdom of the Commission's policy of regulatory restraint. In 2000, ACA predicted that, if shielded from burdensome regulation and costs, the smaller cable sector would be able to raise capital, invest in network upgrades, and widely deploy broadband services.<sup>2</sup> This prediction has become fact, and millions of smaller market consumers and businesses have access to broadband services. In short, the demand and potential for broadband service has invigorated the smaller market cable sector. This letter provides supporting data and specific company examples.

We also recommend the following Commission action to accelerate broadband deployment in smaller markets:

- Continue the wise policy of regulatory restraint. Resist the call for increased federal and local regulation.
- Continue action to reduce competitive imbalance threatening smaller cable operators' core video services. If the video business is not viable, the platform for broadband service is threatened. Specific actions include:
  - As requested by Congress,<sup>3</sup> investigate programming and retransmission consent practices. This will expose how the exercise of market power by a handful of media conglomerates raises costs for smaller cable operators and consumers and threatens the viability of the video platform.
  - Investigate pole attachment rate abuse by currently unregulated cooperative utilities, and recommend to Congress an amendment to the Pole Attachment Act to bring co-ops within its scope.

**The American Cable Association.** ACA represents nearly 1,000 cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller markets. About half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the special challenges of building, operating, and upgrading broadband networks in lower density, higher cost markets.

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<sup>2</sup> *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Comments of the American Cable Association (filed December 1, 2000) ("ACA Cable Modem Comments").

<sup>3</sup> See letter from Congressmen Barton, Dingell, Upton, Markey, and Deal of the Committee on Energy and Commerce to Chairman Powell (May 18, 2004) (available at [http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516208578](http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516208578)) ("Barton Letter").

## **II. Independent cable companies are rapidly deploying broadband service in smaller markets and rural areas.**

ACA members are leading the industry in delivering broadband services to consumers and businesses in smaller markets. Research by ACA and The Carmel Group show the dramatic expansion of broadband services since 2000. Findings include:

- An estimated 580 ACA member companies now offer broadband service to residential and business customers.<sup>4</sup> This represents an increase of over 600% since ACA polled its members in 2000.<sup>5</sup>
- ACA members providing broadband service serve approximately 4,600,000 cable subscribers. ACA members report offering broadband service to a majority of these subscribers. Network upgrades and rollouts continue. Most of the companies are seeking to offer broadband service to all customers by the end of 2004.
- ACA members are rolling out broadband services in smaller and smaller markets. Of the ACA members offering broadband services, 40% serve 1,000 or fewer broadband customers.<sup>6</sup>
- ACA members report that in many smaller markets, they are the only source of broadband services because other providers have chosen not to invest in the required infrastructure. In other cases, the local telephone company began to offer DSL service only after the cable company launched broadband service.

This data validates the Commission's policy of regulatory restraint. In smaller markets, that policy is an unequivocal success. As ACA predicted in 2000, the Commission's approach has helped spur investment and deployment.<sup>7</sup> Free from the disincentives and costs of burdensome regulations, smaller market entrepreneurs have solved many of the challenges of providing broadband services to lower density markets.

Behind the data are hundreds of examples of smaller market providers taking business risks, investing capital, and working hard to deliver broadband to their rural customers. A few examples follow.

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<sup>4</sup> Carmel Group Study at 16.

<sup>5</sup> ACA Cable Modem Comments at 3-9.

<sup>6</sup> Carmel Group Study at 16.

<sup>7</sup> ACA Cable Modem Comments at 9-11, 17.

## **Examples of ACA members' progress in deploying broadband**

**Sunflower Broadband.** Sunflower Broadband is a third-generation family-owned cable company serving customers in Lawrence, Kansas, and several surrounding communities. Since 1996, Sunflower Broadband has invested several million dollars to rebuild its network to offer broadband service and switched telephone service. In the past three years, Sunflower has expanded its broadband footprint to include the rural communities of Tonganoxie, KS (pop. 2,700), and Eudora, KS (pop. 4,300). By the end of 2004, Sunflower Broadband will complete system upgrades to provide broadband services to Bashor, KS (pop. 2,200), and Piper, KS (pop. 1,900). Sunflower will deploy broadband services to Linwood, KS (pop. 375), in 2005. The company reports that an important factor in its decision to invest in broadband infrastructure to serve smaller communities has been the Commission deregulatory policy.

**Wave Broadband.** Wave Broadband is a new cable company serving about 35,000 subscribers in Washington State. Led by cable veteran and former ACA Chairman Steve Weed, Wave Broadband acquired its systems in the past 18 months and has embarked on an ambitious plan to interconnect several previously small, isolated systems. As a result, Wave Broadband's communities and thousands of rural consumers will, for the first time, have access to broadband services and a full suite of advanced video services. The company has already completed more than 75% of its upgrades and plans to complete all interconnects by year-end. At that time, communities like Sequim, WA (pop. 4,600), La Conner, WA (pop. 766), and unincorporated areas of Whatcom and Kitsap Counties will have access to broadband services. Mr. Weed believes that the ability to offer broadband services in a substantially deregulated environment was a critical factor in attracting the capital necessary to fund Wave Broadband's business plans.

**Cebridge Connections.** Cebridge Connections, another new entrant to the smaller market cable sector, provides a powerful example of the progress fostered by the Commission's broadband policy. Led by former Charter Communications CEO Jerry Kent, through a series of recent acquisitions, Cebridge Connections now operates systems serving about 400,000 subscribers in 16 states. Cebridge Connections has undertaken an aggressive capital expenditure plan to interconnect and upgrade more than 93 rural cable systems. As a result, in the past 16 months, more than 132,500 rural consumers in communities like Charleston, AR (pop. 2,965), Moweaqua, IL (pop. 1,923), and Rockville, IN (pop. 2,765), have gained access to broadband services. In addition, Cebridge Connections is launching VoIP services in selected markets, bringing true facilities-based telephone competition to its communities.

**Carson Communications.** Carson Communications is one of ACA's smaller members, serving about 5,000 subscribers in rural northeast Kansas. Carson Communications' systems include one system serving about 3,500 subscribers, five systems serving fewer than 250 subscribers each, and 15 headends serving fewer than 50 subscribers apiece. Carson Communications has combined cable modem service and broadband wireless services to offer broadband service to more than 89% of its rural subscriber base, including Wetmore, KS (pop. 280). According to the company, the

economics of delivering broadband to these smaller communities is already challenging, and the addition of regulatory burdens and costs would undercut the viability of the service.

**NewWave Communications.** NewWave Communications provides another example of a new entrant to the sector. Managed by cable veteran and ACA Chairman Jim Gleason, NewWave Communications recently acquired systems serving about 20,000 subscribers in Tennessee, Missouri, Kentucky and Arkansas. Most of the systems had not been upgraded and did not offer broadband services. NewWave Communications has begun to upgrade the systems, interconnect headends, and offer broadband services. As a result, communities like Dexter, MO (pop. 7,356), and Fulton, KY (pop. 2,775), now have access to broadband services. The company is also working with a local small telephone company and will launch VoIP in these and other markets by the end of this summer. The company reports that its ability to finance and execute its business plan rests, in large degree, upon the ability to offer broadband and advanced services to rural customers without the burdens and costs of substantial regulation.

**Mediacom Communications.** The Commission is familiar with the Mediacom success story. ACA's largest member, founded in 1995 by former Cablevision Industries executive Rocco Commisso, has grown to serve more than 1.2 million cable subscribers, predominantly in smaller markets. Mediacom has executed an aggressive plan to interconnect hundreds of rural systems and deliver broadband and advanced services company-wide. As a result, more than 85% of Mediacom's customers have access to broadband services, including those in communities like Red Oak, IA (pop. 6,197), Eagle Grove, IA (pop. 3,712), and Eddyville, IA (pop. 1,064).

These are just a few examples from the more than 500 ACA member companies that are now delivering broadband services to smaller markets. The Commission should note that these companies include new entrants, led by experienced cable executives, who have raised substantial capital to invest in rural cable systems. The delivery of broadband and advanced services to rural consumers and businesses in a lightly regulated environment is a consistent theme in this progress.

The success of broadband deployment by smaller market cable operators validates the Commission's approach to regulation of cable modem service and provides ammunition to resist the call of some interests to impose burdensome regulations and fees on the service. As discussed below, there is action the Commission can, and should, take to continue to foster broadband deployment in smaller markets.

### **III. The Commission can act in three areas to accelerate broadband deployment in smaller markets.**

To preserve and protect the progress of broadband deployment in smaller markets, the Commission can act in three areas. These are:

**Continue the policy of regulatory restraint.** The Commission should resist calls to regulate broadband service and to impose local fees on the service. No case can be made that these actions would accelerate deployment or adoption. To the contrary, greater

regulation and fees will raise costs and, at the margin, decrease demand for the service. As reported by ACA members, for providers in low density, higher cost markets, increased costs and decreased demand will deter investment and impede deployment. No policy goal supports this result. In short, stay the course.

**Investigate programming and retransmission consent practices.** When considering broadband deployment by rural cable companies, the Commission must not forget that the service is built on a platform that also delivers multichannel video service. If the video platform is not viable, the broadband platform could fail.

As ACA and its members have reported to the Commission elsewhere, most of the programming distributed on rural cable systems is owned by a handful of media conglomerates.<sup>8</sup> The market power these companies exercise over smaller distributors has raised costs, squeezed margins, and nearly eliminated cable operators' ability to offer services in packages that make sense for their particular markets. This conduct, predominantly due to disparities in market power, threatens the viability of the core video business. In response to a request from the House Committee on Energy and Commerce,<sup>9</sup> the Commission has an unprecedented opportunity to examine these issues. The link between programming issues and broadband deployment in rural markets cannot be overstated.

**Recommend an amendment to the Pole Attachment Act to include co-operative utilities.** As noted in NCTA's comments, unreasonable and anticompetitive conduct by pole owners impedes broadband deployment and increases costs of service.<sup>10</sup> The smaller market cable sector is particularly exposed to abuse by rural co-operatives. For example, ACA members in Georgia and South Carolina report recent pole attachment rate increases in excess of 200% annually. In some cases, the cable operator may pay \$6 per pole when dealing with a regulated utility and \$18 per pole when dealing with a rural co-op.

This conduct has eliminated any justification for exempting co-operative pole owners from regulation under the Pole Attachment Act. By amending the Pole Attachment Act to include co-ops within its scope, Congress can restrain co-ops from unreasonably increasing the cost of providing broadband to rural communities.

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<sup>8</sup> See, e.g., *In re Consolidated Application of General Motors Corporation, Hughes Electronic Corporation, and The News Corporation, For Consent to Transfer Control*, MB Docket No. 03-124, Comments of the American Cable Association (filed June 16, 2003) and Reply Comments of the American Cable Association (filed July 1, 2003); *In the Matter of 2002 Biennial Regulatory Review, Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket 02-277, Reply Comments of the American Cable Association (filed February 3, 2003) and Reply Comments of Mediacom Communications Corporation (filed February 4, 2003); *Petition for Inquiry into Retransmission Consent Practices*, American Cable Association, Proceeding PRM02MB (filed October 1, 2002) and *First Supplement* (filed December 9, 2002).

<sup>9</sup> See Barton Letter.

<sup>10</sup> NOI, comments of the National Cable & Telecommunications Association at 18-19.

In closing, the rapid deployment of broadband by ACA members has resulted in millions of rural consumers having access to advanced services. The Commission policy of regulatory restraint has been a key factor in this success.

Sincerely,

A handwritten signature in black ink, appearing to read "Cinnamon", with a long horizontal flourish extending to the right.

Christopher C. Cinnamon

cc: Matthew M. Polka

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**CINNAMON MUELLER**